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Attorneys for Defendant
GAP INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOEL RUIZ, On Behalf of Himself and All Others
Similarly Situated,

Plaintiff,

v.

GAP, INC., and DOES 1-9 inclusive,

Defendants.

Case No. C 07-5739 SC

**STIPULATED
CONFIDENTIALITY ORDER**

Judge: Honorable Samuel Conti

Complaint filed: November 13, 2007

1 IT IS HEREBY STIPULATED AND AGREED, by and among the parties, by and
 2 through their respective undersigned counsel that, subject to the approval of the Court, a
 3 Confidentiality Order shall issue in this action regarding certain information, documents, and
 4 other materials produced during discovery. The parties hereto intend to produce and seek the
 5 production of documents, information, and other materials, and intend to respond to written
 6 discovery and provide and elicit certain testimony which may contain or reveal proprietary,
 7 secret, or sensitive financial, business or trade secret or commercial information, and other
 8 sensitive or proprietary information. The parties desire that such confidential material be
 9 protected by virtue of designating such material as confidential and restricting its dissemination.
 10 This stipulation and order is without prejudice to any party's moving the Court for different or
 11 additional protection for specified materials or categories of materials.

12 DEFINITIONS

13 1. As used in this Confidentiality Order,

14 a. "Designating Party" means any Person, including third parties, who designates
 15 Material as Confidential or Confidential Attorney's Eyes Only Material.

16 b. "Discovering Counsel" means counsel of record for a Discovering Party.

17 c. "Discovering Party" means the Party to whom Material is being provided by a
 18 Producing Party.

19 d. "Expert" means a person with specialized knowledge or experience in a matter
 20 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
 21 witness or a consultant in this action and who is not a past or a current employee of a Party and
 22 who, at the time of retention, is not anticipated to become an employee of a Party. This definition
 23 includes a professional jury or trial consultant retained in connection with this litigation.

24 e. "Material" means any document, testimony or information in any form or medium
 25 whatsoever, including, without limitation, any written, printed, or electronic matter provided in
 26 this action after the date of this Confidentiality Order. "Material" shall include information
 27 contained in such documents, testimony, or other matter.
 28

1 f. "Party" or "Parties" means one or more of the Parties to this action, their attorneys
2 of record and their agents.

3 g. "Person" means any individual, corporation, partnership, organization,
4 unincorporated association, governmental agency, or other business or governmental entity.

5 h. "Producing Party" means any Person who Provides Material during the course of
6 this action.

7 i. "Provide" means to produce any Material, whether voluntarily or involuntarily,
8 whether pursuant to request or process, and whether in accordance with the Federal Rules of Civil
9 Procedure or otherwise.

10 **CONFIDENTIAL DESIGNATION**

11 2. A Party may designate as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS
12 EYES ONLY" any material that the Party, by his/her attorney, has in good faith determined to
13 contain or disclose any of the following, and for which the Producing Party has in fact
14 consistently treated as such:

15 a. "Confidential Material" is Material that a Party in good faith believes constitutes,
16 contains or reveals proprietary, secret, or sensitive financial, business, trade secret, technical or
17 commercial information that is protected by law, the disclosure of which would likely cause harm
18 to the Party or Person from whom the Material was obtained.

19 b. "Confidential – Attorneys' Eyes Only Material" is Material that a Party in good
20 faith believes constitutes, contains or reveals highly proprietary, secret, or sensitive financial,
21 business, trade secret, technical or commercial information, the disclosure of which would create
22 a substantial risk of serious injury to the Party from whom the Material was obtained.

23 3. A Producing Party may designate as "CONFIDENTIAL or CONFIDENTIAL –
24 ATTORNEYS' EYES ONLY" Materials that the Producing Party in good faith believes are
25 entitled to protection pursuant to the standards set forth in Paragraph 2 of this Confidentiality
26 Order. Subject to Paragraph 17 of this Confidentiality Order, a Producing Party may designate
27 Confidential or Confidential Attorneys' Eyes Only Material for Protection under this
28 Confidentiality Order by any of the following methods:

1 a. By identifying the Material with reasonable specificity before permitting the
2 Discovering Counsel to inspect it or to make a copy of it; or

3 b. By physically marking it with the following inscription prior to Providing it to a
4 Party: "CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS' EYES ONLY;" or

5 c. If a Party produces Materials for inspection prior to copying, no marking need be
6 made by the Producing Party in advance of the inspection. For purposes of the initial inspection,
7 all Material shall be considered marked as Confidential – Attorneys' Eyes Only Material.
8 Thereafter, upon selection of specified Material for copying by the inspecting Party, the
9 Producing Party shall mark the copies of such Material with the appropriate confidentiality
10 designation, if any, at the time that the copies are Provided to the Discovering Party.

11 d. Any Party that in good faith believes Material contains Confidential or
12 Confidential – Attorneys' Eyes Only Material of that Party may so designate such Material,
13 notwithstanding that they were produced by a different Party.

14 4. Before the production of discoverable documents, the Parties have the right to redact
15 personal information, such as names, addresses, social security numbers, credit card numbers,
16 financial account numbers, or any account passwords, from the otherwise discoverable document
17 in order to safeguard the privacy of non-Party individuals.

18 **USE OF CONFIDENTIAL AND ATTORNEYS' EYES ONLY MATERIAL**

19 5. Confidential and Confidential – Attorneys' Eyes Only Material shall not be disclosed
20 to any Person other than those described in Paragraphs 8 and 9 of this Confidentiality Order and
21 other than in accordance with the terms, conditions and restrictions of this Confidentiality Order.

22 6. Confidential Material and Confidential – Attorneys' Eyes Only Material Provided by a
23 Producing Party to a Discovering Party shall not be used by the Discovering Party or anyone
24 other than the Producing Party, specifically including the persons identified in Paragraphs 8 and
25 9, for any purpose other than the litigation of the above-captioned action or any appeal thereof,
26 including, without limitation any personal, business, governmental, commercial, or litigation
27 (administrative or judicial) purpose, other than the prosecution or defense of the above-captioned
28 action or any appeal thereof.

1 7. All Confidential and Confidential – Attorneys’ Eyes Only Material shall be kept
2 secure by Discovering Counsel and access to such Material shall be limited to persons authorized
3 pursuant to Paragraphs 8 and 9 of this Confidentiality Order.

4 8. For purposes of the preparation of this action, and subject to the terms, conditions, and
5 restrictions of this Confidentiality Order, Discovering Counsel may disclose Material designated
6 as CONFIDENTIAL only to the following Persons:

7 a. Counsel of record for the Parties in this proceeding, including paralegals,
8 assistants, secretaries, clerical staff or other employees of counsel of record who are assisting
9 counsel of record in this action;

10 b. Court reporters and their staff engaged by the Court or by the Parties;

11 c. The Court and any Person employed by the Court whose duties require access to
12 Confidential Material;

13 d. Witnesses at depositions, pre-trial proceedings or trial, in accordance with
14 procedures set forth in Paragraphs 13-15;

15 e. Outside photocopy, imaging, database, graphics, and design services retained by
16 counsel of record, to the extent necessary to assist such counsel in this litigation;

17 f. Plaintiff;

18 g. Defendant;

19 h. Non-Party Experts and consultants assisting counsel with respect to this action and
20 their secretarial, technical and clerical employees, including copy services, who are actively
21 assisting in the preparation of this action subject to execution of a Certification according to
22 Exhibit A and disclosure according to the procedure set forth in Paragraphs 11 and 12;

23 i. Jury Consultants and mock jurors subject to execution of a Certification according
24 to Exhibit A and disclosure according to the procedure set forth in Paragraphs 11 and 12; and

25 The Parties shall make a good faith effort to limit dissemination of Confidential Material
26 within these categories to Persons who have a reasonable need for access thereto.

27 9. For purposes of the preparation of this action, and subject to the terms, conditions, and
28 restrictions of this Confidentiality Order, Confidential – Attorneys’ Eyes Only Material produced

1 by a Party shall be disclosed only to those persons listed in Paragraph 8 (a), (b), (c), (d), and to
 2 persons designated under Paragraph 8(h) provided that such Experts or consultants are disclosed
 3 to the Producing Party as provided for in Paragraphs 11 and 12 and execute a Certification in the
 4 form of Exhibit A.

5 10. Copies, extracts and translations of Confidential and Confidential – Attorneys’ Eyes
 6 Only Material may be made by or for the Persons authorized to have access to Material
 7 designated under this Confidentiality Order, provided that all copies, extracts and translations are
 8 appropriately marked “CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
 9 All copies, extracts and translations are subject to Paragraph 15 of this Confidentiality Order.

10 **DISCLOSURE OF CONSULTANTS AND CERTIFICATION TO BE BOUND BY**
 11 **CONFIDENTIALITY ORDER**

12 11. Before Discovering Counsel may disclose Confidential or Confidential – Attorneys’
 13 Eyes Only Material to any Person described in subparagraph 8(h) above, the Person to whom
 14 disclosure is to be made shall read a copy of this Confidentiality Order, shall evidence his or her
 15 agreement to be bound by its terms, conditions, and restrictions by signing a certification in the
 16 form attached hereto as Exhibit A (the “Certification”) and shall retain a copy of this
 17 Confidentiality Order, with a copy of his or her signed Certification attached. Discovering
 18 Counsel shall keep a copy of the signed Certification for each Person described in
 19 subparagraph 8(h) to whom Discovering Counsel discloses Confidential and Confidential –
 20 Attorneys’ Eyes Only Material.

21 12. Before disclosing any Confidential or Confidential – Attorneys’ Eyes Only Material
 22 to any Person described in subparagraph 8(h) above, Discovering Counsel shall provide to the
 23 other Party a copy of a resume or curriculum vitae describing in detail the Expert or consultant’s
 24 employment history and every consulting relationship in which such Expert or consultant is
 25 currently engaged or has been engaged in the past five (5) years and all work relating to the retail
 26 business, privacy or information security. The notified Parties shall have ten (10) business days
 27 from receipt of the Notice to deliver to the notifying Party written objections, if any, setting forth
 28 in detail the reasons therefore. Absent timely objection, the Expert or consultant shall be deemed

1 approved. Upon timely objection, disclosure of designated Material to the Expert or consultant
2 shall not be made, subject to a ruling on a motion for relief brought by the Designating Party
3 which motion must be brought within ten (10) business days from receipt of the Notice.

4 **DEPOSITIONS**

5 13. Those portions of depositions taken by any Party at which any Confidential or
6 Confidential – Attorneys’ Eyes Only Material is used or inquired into, may not be conducted in
7 the presence of any Persons other than (a) the deposition witness, (b) his or her counsel, and
8 (c) Persons authorized under Paragraphs 8 and 9 of this Confidentiality Order to view such
9 Material.

10 14. Counsel for any deponent may designate testimony or exhibits as Confidential or
11 Confidential – Attorneys’ Eyes Only Material by indicating on the record at the deposition that
12 the testimony of the deponent or any exhibits to his or her testimony are to be treated as
13 Confidential Material or Confidential – Attorney’s Eyes Only. Counsel for any Party may
14 designate any exhibit in which that Party has a cognizable interest as Confidential and
15 Confidential – Attorneys’ Eyes Only Material by indicating on the record at the deposition that
16 such exhibit is to be treated as Confidential or Confidential – Attorneys’ Eyes Only Material.
17 Failure of counsel to designate testimony or exhibits at deposition, however, shall not constitute a
18 waiver of the confidential status of the testimony or exhibits. Within thirty (30) calendar days of
19 receipt of the transcript of the deposition counsel shall be entitled to designate specific testimony
20 or exhibits as Confidential or Confidential – Attorneys’ Eyes Only Material. If counsel for the
21 deponent or Party fails to designate the transcript or exhibits as Confidential or Confidential –
22 Attorneys’ Eyes Only within the thirty (30) day period, any other Party shall be entitled to treat
23 the transcript or exhibits as non-confidential material.

24 15. When Material disclosed during a deposition is designated Confidential or
25 Confidential – Attorneys’ Eyes Only Material at the time testimony is given, the reporter shall
26 separately transcribe those portions of the testimony so designated, shall mark the face of the
27 separate transcript in accordance with Paragraph 4 as directed by the Designating Party, and shall
28 maintain that portion of the transcript or exhibits in separate files marked to designate the

1 confidentiality of their contents. The reporter shall not file or lodge with the Court any
2 Confidential or Confidential – Attorneys’ Eyes Only Material without obtaining written consent
3 from the Party that made such designation. For convenience, if a deposition transcript or exhibit
4 contains repeated references to Confidential or Confidential – Attorneys’ Eyes Only Material
5 which cannot conveniently be segregated from non-confidential material, any Party may request
6 that the entire transcript or exhibit be maintained by the reporter as Confidential or Confidential –
7 Attorneys’ Eyes Only Material.

8 **USE OF CONFIDENTIAL MATERIAL IN PLEADINGS AND OTHER COURT PAPERS**

9 16. If any Party files with the Court any pleading, discovery response, affidavit, motion,
10 brief, or other paper containing, appending, summarizing, excerpting or otherwise constituting
11 Confidential or Confidential – Attorneys’ Eyes Only Material, the pleading or other paper
12 containing the Confidential or Confidential – Attorneys’ Eyes Only Material shall be filed under
13 seal pursuant to the Local Rules of the United States District Court of the Northern District of
14 California.

15 **OBJECTIONS TO DESIGNATION**

16 17. Any Party may at any time notify the Designating Party in writing of its contention
17 that specified Material designated as Confidential or Confidential – Attorneys’ Eyes Only
18 Material is not properly so designated because such Material does not meet the standards set forth
19 in Paragraph 3 of this Confidentiality Order. The Designating Party shall within ten (10) court
20 days, meet and confer in good faith with the Party challenging the designation in an attempt to
21 resolve such dispute. The challenging Party shall have twenty (20) calendar days from the
22 conclusion of the meet and confer to file a motion challenging the designation of the Material in
23 question. If no motion is filed within that 20-day period, or any mutually agreed to extension of
24 time, all Parties shall treat the Material as designated. If a motion challenging the designation is
25 filed, the challenging Party must show by a preponderance of the evidence that there is no good
26 cause for the designation as Confidential or Confidential – Attorneys’ Eyes Only Material.
27 Pending resolution of any motion filed pursuant to this Paragraph, all Persons bound by this
28

1 Confidentiality Order shall continue to treat the Material that is the subject of the motion
2 according to its designation.

3 18. If any Material that a Party claims in good faith is Confidential or Confidential –
4 Attorneys’ Eyes Only Material is inadvertently disclosed to a Discovering Party without being
5 properly designated, the Producing Party may notify each Discovering Party that such Material
6 was inadvertently Provided without designation and the reasons therefore. Such written notice
7 shall identify with specificity the Material the Producing Party is then designating to be
8 Confidential or Confidential – Attorneys’ Eyes Only Material. If the Producing Party gives such
9 written notice as provided above, its claims of confidentiality shall not be deemed to have been
10 waived by its failure to designate properly the Material prior to disclosure. Upon receipt of
11 written notice as provided for herein, the receiving party shall mark the original and all known
12 copies of the Material with the proper designation. In addition, the Discovering Party shall use its
13 best efforts to ensure that the Material that was inadvertently disclosed is thereafter restricted to
14 only those persons entitled to receive Confidential or Confidential – Attorneys’ Eyes Only
15 Material under the terms set forth herein.

16 19. Counsel shall exert their best efforts to identify Material protected by the attorney-
17 client privilege or the work product doctrine prior to the disclosure of any such information or
18 Material. The inadvertent production of any Material shall be without prejudice to any claim that
19 such Material is protected by the attorney-client privilege or protected from discovery as work
20 product, and no Party shall be held to have waived any rights thereunder by inadvertent
21 production. If within a reasonable time after Material is disclosed, a Producing Party asserts that
22 such information or material is protected by the attorney-client privilege or work product doctrine
23 and was inadvertently Provided, the Discovering Party shall take prompt steps to ensure that all
24 known copies of such Material are returned promptly to the Producing Party. The cost, if any, for
25 returning such Materials by the Discovering Party shall be borne by the Producing Party. The
26 Parties may thereafter contest such claims of privilege or work product as if the Material had not
27 been Provided but shall not assert that a waiver occurred as a result of the production.
28

1 the Confidentiality Order to the Material. Upon request, counsel for each Party shall verify in
2 writing that they have complied with the provisions of this paragraph.

3 **THIRD PARTIES**

4 22. Should either Party to this action seek discovery from a non-Party, the non-Party shall
5 be notified of the existence of this Confidentiality Order and provided with a copy at the same
6 time as such discovery is sought. Such non-Party or any Party may designate Material in the non-
7 Party's possession in accordance with the provisions of this Confidentiality Order, the Parties and
8 all Persons eligible to receive Materials designated under this Confidentiality Order shall treat
9 designated Material in the same manner as documents designated by Parties to this action, and the
10 non-Party shall have all the same rights and protections provided in this Confidentiality Order
11 with respect to its Confidential and Confidential – Attorneys' Eyes Only Material as provided to
12 the Parties.

13 23. If any Person or Party receives a subpoena from a non-Party or a court or
14 administrative agency that potentially calls for the production of Confidential or Confidential –
15 Attorneys' Eyes Only Material, the Person or Party receiving the subpoena shall promptly notify
16 and provide a copy of the subpoena to the Designating Party within ten (10) business days of
17 receipt of the subpoena (or as soon as reasonably possible before the designated date for
18 production if the return date on the subpoena is less than ten days from the date of receipt). This
19 paragraph shall apply to Confidential Information obtained by a Person or Party under the terms
20 of the Confidentiality Order, or Confidential Information that is held by a Person or Party under
21 an obligation of confidentiality to another Party or non-Party. The Person or Party receiving the
22 subpoena shall produce designated Material unless the Designating Party seeks an order of this
23 Court to prevent its disclosure within ten (10) business days of receiving notice of the subpoena
24 or before the designated date of production if the return date on the subpoena is less than ten days
25 from the date of receipt and the receiving Person or Party is unable in good faith to negotiate an
26 extension of time. The Person or Party subpoenaed shall also inform the subpoena's issuer of this
27 Confidentiality Order.
28

NO PREJUDICE

24. Nothing in this Confidentiality Order shall preclude any Party from seeking and obtaining additional protection with respect to the confidentiality of discovery by further Orders.

25. This Confidentiality Order shall not diminish any existing obligation or right with respect to designated Material, nor shall it prevent a disclosure to which the Designating Party consents in writing before the disclosure takes place.

26. Unless the Parties stipulate otherwise, evidence of the existence or nonexistence of a designation under this Confidentiality Order shall not be admissible for any purpose during any proceeding on the merits of this action.

27. A Party may seek by written agreement or court order to make late designations of material otherwise entitled to protection under this Confidentiality Order if the Party failed to make a timely designation through mistake or inadvertence and failed to correct such error within a reasonable time in accordance with the requirements of Paragraph 14.

SCOPE OF THIS ORDER

28. Nothing in this Confidentiality Order shall be deemed to limit, prejudice, or waive any right of any Party or Person (a) to resist or compel discovery with respect to, or to seek to obtain additional or different protection for, Material claimed to be protected work product or privileged under California or federal law, Material as to which the Producing Party claims a legal obligation not to disclose, or Material not required to be provided pursuant to California or federal law; (b) to seek to modify or obtain relief from any aspect of this Confidentiality Order; (c) to object to the use, relevance, or admissibility at trial or otherwise of any Material, whether or not designated in whole or in part as Confidential or Confidential – Attorneys’ Eyes Only Material governed by this Confidentiality Order; or (d) otherwise to require that discovery be conducted according to governing laws and rules.

29. Designation of Material as Confidential or Confidential – Attorneys’ Eyes Only Material on the face of such Material shall have no effect on the authenticity or admissibility of such Material at trial.

30. This Confidentiality Order shall not preclude any Person from waiving the applicability of this Confidentiality Order with respect to any Confidential or Confidential – Attorneys’ Eyes Only Material Provided by that Person or using any Confidential or Confidential – Attorneys’ Eyes Only Material Provided by that Person or using any Confidential Material owned by that Person in any manner that Person deems appropriate.

31. This Confidentiality Order shall not affect any contractual, statutory or other legal obligation or the rights of any Party or Person with respect to Confidential or Confidential – Attorneys’ Eyes Only Material designated by that Party.

SUBMISSION TO COURT

32. The Parties agree to submit this Confidentiality Order to the Court for adoption as an order of the Court.

33. The Parties reserve the right to seek, upon good cause, modification of this Confidentiality Order by the Court.

34. This Confidentiality Order may be executed in counterparts.

I, William L. Stern, am the ECF user whose ID and password are being used to file this Stipulated Confidentiality Order. In compliance with General Order 45.X.B, I hereby attest that Tracy D. Rezvani has concurred in this filing.

Dated: June 26, 2008

Respectfully submitted,

FINKELSTEIN THOMPSON LLP

By: /s/ Tracy D. Rezvani

Mila F. Bartos

Tracy D. Rezvani (*pro hac vice*)

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Dated: June 26, 2008

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By: /s/ William L. Stern
William L. Stern

Attorneys for Defendant GAP INC.

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[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____

The Honorable Samuel Conti
United States District Judge

EXHIBIT A

CERTIFICATION

I, _____ (print or type name), hereby certify that I have read the “Stipulated Confidentiality Order” in the action entitled *Ruiz v. GAP, Inc.*, No. C 07-5739 SC, prior to receiving any Confidential or Confidential – Attorneys’ Eyes Only Materials as defined therein, that I understand the terms and effect of that Order, and that I agree to be bound thereby. I acknowledge and agree that the terms of the Confidentiality Order are enforceable against me as a contract by any party both during and after the conclusion of this proceeding. I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California, in connection with that Order.

I understand that the Confidentiality Order, among other things, prohibits the use of any information designated as confidential for any purpose other than these proceedings, and further that I am prohibited from disclosing confidential information (or any copies, extracts, summaries or information otherwise derived from such information) to any other person except as specifically provided for in the Confidentiality Order.

I understand that all Confidential or Confidential – Attorneys’ Eyes Only Materials, as defined in the Order, including, but not limited to any copies thereof or notes or other transcriptions made therefrom, shall be maintained in a secure manner and shall be returned upon termination of my services in this action, but in no event within 30 days following the termination of this litigation, including all appeals.

I declare the foregoing under penalty of perjury under the laws of the State of California.

DATED: _____

SIGNED: _____